

April 30, 2018

The Honorable Mike Enzi  
Chairman  
Committee on the Budget  
United States Senate  
624 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mark Bialek  
Inspector General  
Board of Governors of the  
Federal Reserve System  
20th Street and Constitution Ave. N.W.  
Mail Stop K-300  
Washington, DC 20551

The Honorable Bernie Sanders  
Ranking Member  
Committee on the Budget  
United States Senate  
624 Dirksen Senate Office Building  
Washington, DC 20510

Re: Request for Investigation into Mick Mulvaney's Conduct and Disclosures Regarding Foreclosure Proceedings

Dear Chairman Enzi, Ranking Member Sanders, and Inspector General Bialek,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that you review and investigate whether Mick Mulvaney, the Director of the Office of Management and Budget (“OMB”) and Acting Director of the Consumer Financial Protection Bureau (“CFPB”), both misled the Senate Budget Committee during his confirmation process and violated his ethical obligations by failing to pay debts lawfully owed by his company. In his confirmation, Mr. Mulvaney represented that a foreclosure proceeding involving one of his investments was “uncontested,” but it appears that he knew that to be inaccurate. In addition, it appears Mr. Mulvaney violated his ethical obligations by taking complex, unusual and potentially dishonest steps to avoid paying debts his company owed related to the property at issue in the foreclosure.

This letter is addressed to each of you because the allegations involve matters that appear to fall under your respective areas of jurisdiction although they arise out of a single real estate investment.<sup>1</sup>

This request for review and investigation arises out of foreclosure proceedings in a complex real estate development deal in which Mr. Mulvaney is a significant investor. During his confirmation hearings in January 2017, Mr. Mulvaney asserted that the foreclosure proceeding “as of this writing is uncontested” and that one of the lenders, Fonville & Co. (“Fonville”), had an unsecured interest. As Mr. Mulvaney should have known, Fonville an aggrieved lender, had a

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<sup>1</sup> In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act named the Office of Inspector General (“OIG”) for the Board of Governors of the Federal Reserve (“Board”) the OIG for the CFPB. OMB has no Inspector General appointed to it.

secured interest, as evidenced by a mortgage lien on the property, and was preparing to contest the proceedings. To this end, three days before Mr. Mulvaney was confirmed by the Senate, Fonville filed a claim in the foreclosure proceeding seeking \$2.565 million for breach of contract and made certain allegations regarding the events leading up to the foreclosure. Despite these changed circumstances, Mr. Mulvaney did not update the Senate following Fonville's filing. By making false and misleading statements and failing to correct and update his Senate nomination papers prior to his confirmation, Mr. Mulvaney may have made a material false statement in violation of 18 U.S.C. § 1001.

Mr. Mulvaney's conduct regarding the property at issue in the foreclosure also may have violated his ethical obligations. Like all executive branch employees, Mr. Mulvaney is subject to standards of ethical conduct, which include a commitment to "satisfy in good faith their obligations as citizens, including all just financial obligations" and to avoid any action creating the appearance that they are violating the law or ethical standards.<sup>2</sup> Since he appears to have taken extraordinary measures to protect his own interests and avoid satisfying his company's loan obligations to Fonville, Mr. Mulvaney appears to be in violation of the standards of ethical conduct.

As OMB Director, Mr. Mulvaney is responsible for managing the federal government's budget involving trillions of dollars. As Acting Director of the CFPB, he is expected to protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law.<sup>3</sup> His real estate dealings appear to be at odds with his ethical requirements and the basic principles he is expected to uphold as head of OMB and acting head of the CFPB.

### **Background**

#### **Lancaster Collins Road LLC Real Estate Investment**

Like many other real estate investors and developers, Mr. Mulvaney has created a web of limited liability corporations ("LLC") to house his real estate investments and to limit his personal liability in the event of default, breach of contract, or other legal claims. As detailed below, his investment in Lancaster Collins Road LLC ("Lancaster") is particularly complex because he used various LLCs and loan arrangements to acquire and preserve his investment in a single parcel of real estate. Moreover, once Mr. Mulvaney's LLC defaulted on its loan obligations to its creditors, he took extraordinary steps to use the judicial foreclosure system to strip a significant creditor of its interest in the property.

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<sup>2</sup> 5 C.F.R. §§ 2635.101(b)(12), (14).

<sup>3</sup> Consumer Financial Protection Bureau website, "About us" page, available at <https://www.consumerfinance.gov/about-us/the-bureau/>.

Mr. Mulvaney wholly owns a real estate investment company called MP/Collins Road LLC (“MP/Collins”).<sup>4</sup> In 2007, MP/Collins acquired a 25% ownership interest in Lancaster.<sup>5</sup> In April 2007, Lancaster borrowed \$1.4 million from a private company, Fonville, and \$3.45 million from First Charter Bank to purchase 17.36 acres (later reduced to 14.8 acres) of undeveloped property located in Indian Land, South Carolina (“Lancaster property”).<sup>6</sup> On April 25, 2007, Fonville recorded a mortgage as evidence of its lien against the Lancaster property.<sup>7</sup> The First Charter loan had a one-year maturity and was replaced in September 2008 by a \$3.7 million loan from Paragon Bank.<sup>8</sup> Fonville agreed to subordinate its interest in the property to Paragon Bank, thus making Paragon Bank the first lien holder and Fonville the second lien holder.

Following the financial crisis and its “impact on the marketability of the property,” Lancaster was unable to meet its October 2016 loan payment.<sup>9</sup> Normally, when a property goes into default on its mortgage, the lien holders can institute foreclosure proceedings to force a sale of the property. Where a property has more than one lienholder, the priority lien holder can force a sale, bid the amount outstanding on its lien, and if there are no higher bids, receive title to the property free and clear of the lower priority lien holders. In a foreclosure, a debtor typically does not recover their investment until after all lien holders are satisfied.

The foreclosure of Mr. Mulvaney’s investment property, however, has been far from typical. Rather than stand in line after the lien holders, Paragon Bank and Fonville, Mr. Mulvaney took unusual and questionable steps to take the place of Paragon Bank and strip Fonville of its interest in the property, thereby preserving his own investment.

First, Mr. Mulvaney undertook to cut in front of Fonville by acquiring Paragon Bank’s place in line. In October 2016, a new company, Indian Land Ventures, LLC,<sup>10</sup> in which Mr. Mulvaney

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<sup>4</sup> As part of the nomination process, Mr. Mulvaney was permitted to retain his ownership interest in MP/Collins LLC, a real estate investment company. Although Mr. Mulvaney was required to resign as managing member, his spouse was permitted to take over the management function. See John Michael Mulvaney, Public Financial Disclosure Report, Jan. 4, 2017 (“Mulvaney OGE 278”), line 6 (part 1) and line 13 (part 2), available at <http://bit.ly/2J8i5XD>; Letter from Mick Mulvaney to Ms. Ilona Cohen, Designated Agency Ethics Official, Office of Management and Budget, Jan. 13, 2017 (“Ethics Agreement”), available at <http://bit.ly/2Hv6xk9>. In his Senate nomination papers, Mr. Mulvaney disclosed having a “100%” interest in MP/Collins. See Pre-Hearing Questions from Senator Jeff Merkley, Nomination of the Honorable Mick Mulvaney, of South Carolina, to be Director of the Office of Management and Budget, (“Senate Hearing Transcript and Materials”), at 142, available at <http://bit.ly/2J7vJKq>.

<sup>5</sup> Mulvaney OGE 278 line 13 (part 2) and corresponding endnote; Senate Hearing Transcript and Materials, at 142.

<sup>6</sup> See *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Indian Land Ventures, LLC’s Brief in Support of Motion to Dismiss Pursuant to Rule 12(b)(6), Case No. 2016-CP-29-01319, South Carolina Court of Common Pleas (County of Lancaster), available at <http://bit.ly/2JUzfoc>; First Charter Bank Mortgage, Apr. 25, 2007, available at <http://bit.ly/2qNn9JF>. The original parcel consisted of 17.363 acres, but was subsequently reduced to 14.8 acres after the sale of 2.554 acres to QuikTrip Corp. See Fonville & Co. Mortgage, Apr. 25, 2007, available at <http://bit.ly/2EY8WOS>; Deed to QuikTrip Corp. Aug. 15, 2014, available at <https://bit.ly/2I21GEE>.

<sup>7</sup> Fonville & Co. Mortgage, Apr. 25, 2007.

<sup>8</sup> Paragon Bank Mortgage, Sept. 26, 2008, available at <https://bit.ly/2HxB4dC>. Neither the Fonville nor Paragon Bank loans were reported as liabilities on the OGE 278 report. Mr. Mulvaney would not need to report them unless he was personally liable for the loans.

<sup>9</sup> Senate Hearing Transcript and Materials, at 132, 142.

<sup>10</sup> State of South Carolina Secretary of State Articles of Organization for Indian Land Ventures, LLC, Sept. 19, 2016, available at <https://bit.ly/2Fh4GKk>.

has reported a 33% ownership interest,<sup>11</sup> purchased the Paragon Bank loan.<sup>12</sup> Mr. Mulvaney appears to have financed this transaction by personally guaranteeing a loan from Southern First Bank, with a reported value between \$1 million and \$5 million.<sup>13</sup> This loan, obtained in 2016, is of short duration and is due to expire this month, April 2018.<sup>14</sup> The lender, Southern First Bank, appears to be primarily regulated by the Federal Reserve and Federal Deposit Insurance Corporation, although it is also subject to some CFPB regulations.<sup>15</sup> In October 2016, after Lancaster had defaulted on its loan, Paragon Bank assigned the mortgage to Indian Land Ventures.<sup>16</sup>

In November 2016, with Mr. Mulvaney apparently having a significant interest in both sides of the transaction, the mortgagee, Indian Land Ventures, filed a foreclosure action against the mortgagor, Lancaster.<sup>17</sup> In this action, Indian Land Ventures contends that it acquired a “first priority lien” from Paragon Bank and that the Fonville mortgage is subordinate to its lien.<sup>18</sup>

If the foreclosure action is successful, Indian Land Ventures will gain title to the Lancaster property free and clear of the Fonville lien, and, as Mr. Mulvaney represented, Fonville likely will not be paid back any of the \$1.4 million loan it made to Lancaster.<sup>19</sup> Nor is Fonville likely to have success recouping its losses by suing the Lancaster investors, as they are shielded from personal liability based on the legal protections afforded to members of limited liability corporations under South Carolina law.<sup>20</sup> If the foreclosure occurs, Indian Land Ventures will be free to sell the Lancaster property or otherwise gain from its investment in the property, and Fonville will have no legal right to the Lancaster property. Thus, Mr. Mulvaney will be in a superior position to recoup his investment in the Lancaster property, because he maneuvered to strip Fonville of its interest in the property.

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<sup>11</sup> There are two entries for Indian Land Ventures on Mr. Mulvaney’s OGE 278. On line 18 (part 2), Indian Land Ventures is reported as an asset that owns a mortgage on the Lancaster property in which Mr. Mulvaney reports holding a 33.3% ownership interest. On line 3 (part 8), Indian Land Ventures is reported as a liability as a loan to Lancaster, which is owned partly by MP/Collins.

<sup>12</sup> Senate Hearing Transcript and Materials, at 143.

<sup>13</sup> Mulvaney OGE 278 Report, line 4 (part 8).

<sup>14</sup> *Id.*

<sup>15</sup> Southern First Bancshares, Inc., SEC Form 10-K, Feb. 28, 2018, at 13 and 33, available at <http://bit.ly/2vsbHsp>.

<sup>16</sup> *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Complaint, Nov. 14, 2016 (“Indian Land Ventures Complaint”), at ¶ 23, available at <http://bit.ly/2EXpQx2>. According to the Indian Land Ventures Complaint, ¶ 23, the mortgage was assigned by Paragon Bank to Indian Land Ventures on October 13, 2016, and recorded with the Register of Deeds of Lancaster County, on October 14, 2016. The exact timing of the default relative to the purchase of the loan is unclear since Mr. Mulvaney represented in his Senate nomination papers that the loan was purchased by Indian Land Ventures before Lancaster defaulted on the loan, while Fonville represented in its pleadings that the default occurred after the loan was purchased but prior to the assignment. See Senate Hearing Transcript and Materials, at 143; *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Fonville Answer, Counterclaim, and Cross-Claim, Feb. 13, 2017, at ¶¶ 25- 27, available at <http://bit.ly/2H9teLg>.

<sup>17</sup> Indian Land Ventures Complaint.

<sup>18</sup> *Id.* ¶¶ 16, 31.

<sup>19</sup> Senate Hearing Transcript and Materials, at 132.

<sup>20</sup> See S.C. Code Ann. § 33-44-303.

Senate Disclosures

In his Senate nomination papers, signed on January 4, 2017, Mr. Mulvaney described himself as “a minority owner in both the plaintiff and a defendant (the debtor and the creditor) in [a] foreclosure proceeding,” and represented that the foreclosure action “*as of this writing is uncontested.*”<sup>21</sup> Mr. Mulvaney also represented that the Fonville mortgage is “second-tier unsecured mezzanine financing.”<sup>22</sup> Mr. Mulvaney disclosed with respect to Fonville: “As a result of that foreclosure, the mezzanine financing provided by the Fonville & Co. will go unpaid and may be foreclosed, though that entity will be provided the opportunity to bid for the property.”<sup>23</sup> In response to questions submitted by Senator Jeff Merkley for his January 24, 2017 hearing, Mr. Mulvaney provided more details about the arrangement, which confirm his personal involvement in the decision to purchase the Paragon Bank loan.<sup>24</sup> At no time did Mr. Mulvaney disclose that Fonville, was a secured lender or that it would likely contest the proceeding.

Fonville Contests the Foreclosure Action Alleging Fraudulent Inducement by “Member A”

On February 13, 2017, three days before Mr. Mulvaney was confirmed by the Senate, Fonville filed a cross-claim against Lancaster contesting the foreclosure action alleging it is due \$2.565 million (\$1.4 million in unpaid principal and \$1.165 million in accrued interest) for breach of contract, and a counterclaim against Indian Land Ventures alleging equitable subordination and tortious interference with a contract.<sup>25</sup> Fonville’s claims allege “fraudulent acts,” “inequitable misconduct,” and “breach[] of fiduciary duty” by an unidentified “Member A,” who like Mr.

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<sup>21</sup> Senate Hearing Transcript and Materials, at 132 (emphasis added).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 131-32. Mr. Mulvaney explained:

[A] group in which I am a minority owner (Indian Land Ventures, LLC) purchased the loan from Paragon Bank at par, in October 2016, before the loan went into default. Accordingly, the debt to Paragon Bank was paid in full. Indian Land Ventures has begun foreclosure proceedings against [Lancaster] Collins Road, LLC on the unpaid (formerly Paragon Bank) debt. As a result of that foreclosure, the mezzanine financing provided by the Fonville & Co. will go unpaid and may be foreclosed, though that entity will be provided the opportunity to bid for the property.

<sup>24</sup> *Id.* at 142-43. Mr. Mulvaney explained:

A company in which I am a minority owner bought a loan from a bank. . . . I have a 100% ownership interest in a company named MP/Collins Road, LLC. (MPC). Through that entity, I own a 25% interest in a company named Lancaster-Collins Road, LLC (LCR). LCR bought a piece of land in Lancaster County in 2007. To do so, it borrowed money from Paragon Bank. I was not a manager of LCR, and was not directly involved in the negotiation, financing or purchase of the land, though I was involved in helping identify the property purchased. In 2016, it became evident that LCR would not be able to repay the Paragon loan when it came due in late October of that year. I did not want a company in which I was an owner to default on a bank loan. Accordingly, another company in which I am a minority-owner and a member-manger, Indian Land Ventures, LLC (ILV) raised the capital necessary to buy the loan from Paragon Bank to LCR, before it went into default. The loan was bought at par. Thus the bank loan was paid in full, and ILV became the lender to LCR. I was involved in the purchase of the loan. When LCR was unable to pay the loan when due, ILV began foreclosure proceedings. Those proceedings are ongoing.

<sup>25</sup> *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Fonville Answer, Counterclaim, and Cross-Claim, at 11-13.

Mulvaney is a member of both Lancaster and Indian Land Ventures.<sup>26</sup> Although the identity of Member A is not revealed in its pleading, as detailed below, circumstantial evidence points to the likelihood that Mr. Mulvaney is Member A.

Contrary to Mr. Mulvaney's representation to the Senate that Fonville's loan was "unsecured," Fonville states that its mortgage was recorded on April 25, 2007, creating a lien on the property.<sup>27</sup> This is confirmed by a title search which revealed the mortgage lien recorded by Fonville.<sup>28</sup> Fonville alleges that it relied on representations made by Member A to make the loan to Lancaster and that it was misled to its detriment. Fonville asserts that it was induced to make the loan because it had a "relationship of trust and confidence" with Member A "based on previous business dealings."<sup>29</sup> Further, according to Fonville, Member A "represented that he was investing in Lancaster, that he would be a member of Lancaster, and that Lancaster would follow through with its obligations."<sup>30</sup> Fonville alleges it "relied on the representations" by Member A and on its understanding that, because Member A was to be a member of Lancaster, "its loan must be repaid before Member A could receive any return on his investment in Lancaster."<sup>31</sup>

Not only did Fonville rely on these representations when it made the loan, according to its claims, it also relied on Member A's representations to delay taking legal action to enforce its rights after the Lancaster property went into default. Fonville alleges it had the legal right to initiate foreclosure proceedings following the default, but that Lancaster "induced Fonville not to exercise its legal right to foreclose" after Lancaster represented it would "make good on its promises to repay the loan."<sup>32</sup> To this end, Fonville alleges that the formation of Indian Land Ventures and its "subsequent purchase of the mortgage" was an "intentional scheme" by Member A to "receive proceeds from the sale of Lancaster's property to the exclusion of Fonville" and that these actions were "done with the intent to deceive" and "constitute fraudulent acts and inequitable misconduct."<sup>33</sup> Fonville asserts that that "despite [Member A's] initial involvement in inducing and executing the Fonville Loan, he attempts to use this foreclosure action to eliminate the Fonville Mortgage and, effectively, to elevate the priority of his mere equity investment."<sup>34</sup>

Both Lancaster and Indian Land Ventures deny Fonville's allegations.<sup>35</sup> However, in the course of this denial, Indian Land Ventures further denies that there is any "individual or entity which is both a member of Indian Land and a member of Lancaster,"<sup>36</sup> a statement at odds with Mr.

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<sup>26</sup> Fonville Answer, Counterclaim, and Cross-Claim, at 11-12 (¶¶ 38-40, 51-52).

<sup>27</sup> Fonville Answer, Counterclaim, and Cross-Claim, at 7 (¶ 12).

<sup>28</sup> Fonville Mortgage, available at <http://bit.ly/2EY8WOS>.

<sup>29</sup> Fonville Answer, Counterclaim, and Cross-Claim, at 8, (¶ 15).

<sup>30</sup> *Id.* (¶ 17).

<sup>31</sup> *Id.* (¶ 18).

<sup>32</sup> *Id.* (¶¶ 20-22).

<sup>33</sup> *Id.* at 11 (¶ 41).

<sup>34</sup> *Id.* at 10 (¶ 31).

<sup>35</sup> *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Lancaster Answer to Cross-Claim, Mar. 15, 2017, available at <http://bit.ly/2HcQIv5>; Indian Land Ventures Answer to Counterclaims, Apr. 10, 2017, available at <http://bit.ly/2qGtgOp>; Indian Land Ventures Motion to Dismiss Pursuant to S.C.R. CIV.P. 12(b)(6), May 26, 2017, available at <http://bit.ly/2vpuSTL>.

<sup>36</sup> *Indian Land Ventures, LLC v. Lancaster Collins Road, LLC and Fonville & Co.*, Indian Land Ventures Brief in Support of Motion to Dismiss, Nov. 9, 2017, at n.1, available at <http://bit.ly/2JUzfoc>.

Mulvaney's representations to the Senate about his ownership status with respect to each of the two entities.<sup>37</sup>

While it is not known whether Mr. Mulvaney is the unidentified "Member A" who is alleged by Fonville to have engaged in "fraudulent acts," "inequitable misconduct" and "breach[] of fiduciary duty," the circumstantial evidence strongly points in favor of that conclusion. Like the "Member A" described in Fonville's complaint, Mr. Mulvaney stands to benefit from the foreclosure action taken by Indian Land Ventures and has a membership interest in both Indian Land Ventures and Lancaster. Like Member A, Mr. Mulvaney appears to benefit from the use of the foreclosure action to strip Fonville of its lien on the Lancaster property to elevate the priority of his "mere equity investment." Fonville alleged the "subsequent purchase of the mortgage" was part of an "intentional scheme" by Member A, and Mr. Mulvaney has acknowledged his personal involvement in acquiring the Paragon Bank loan. Thus, the evidence strongly suggests that Mr. Mulvaney is Member A.

### **Potential Violations**

#### **18 U.S.C. § 1001**

Section 1001 prohibits a person from "knowingly and willfully" making any "false writing or document" in a matter within the jurisdiction of the federal government, including a review by a congressional committee, that contains "any materially false, fictitious, or fraudulent statement or entry." Mr. Mulvaney appears to have misled the Senate in his assertion that the foreclosure action was "as of this writing [] uncontested," when he characterized Fonville's loan as "unsecured," and when he failed to correct the record after Fonville filed its claim contesting the foreclosure action. By representing that the Fonville loan was "unsecured" and the foreclosure action was "uncontested," which were both false and material, Mr. Mulvaney may have violated 18 U.S.C. § 1001.

At the time he signed his Senate paperwork, on January 4, 2017, Mr. Mulvaney knew or should have known that Fonville had a secured interest in the property and was very likely to contest the foreclosure proceeding. As an experienced real estate developer and attorney, it is reasonable to assume that he would understand the difference between secured and unsecured loans, and Fonville's loan was undoubtedly secured as evidenced by the mortgage lien recorded on the Lancaster property's title. In addition, Mr. Mulvaney should have known that Fonville would contest the foreclosure, because if it did not do so, the foreclosure action would strip Fonville of its lien interest, preventing it from recovering any portion of the \$1.4 million loan made to Lancaster. Unless Mr. Mulvaney knew that all three parties – Fonville, Indian Land Ventures and Lancaster – were in agreement about the foreclosure action, any statement representing the matter as "uncontested" was misleading at best, and potentially false.

These statements also should be viewed as material since they appear to have been made as part of an effort to demonstrate that his business affairs were in good order. For the Director of

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<sup>37</sup> Senate Hearing Transcript and Materials, at 132, 142-43.

OMB, anything less than good standing in his business endeavors would open up the nominee's qualifications to serious questioning and jeopardize his Senate confirmation. While participation in a contested foreclosure may have been enough to warrant further scrutiny of his business affairs by the Senate, that scrutiny would likely have gone deeper still if, as the circumstantial evidence strongly suggests, Mr. Mulvaney is "Member A." In that case, the Senate should have had the opportunity to review Fonville's allegations of fraud and misconduct. Further scrutiny of the Lancaster property foreclosure action, scrutiny which Mr. Mulvaney's apparent misrepresentation thwarted, could have materially altered the outcome of his nomination.

Mr. Mulvaney also failed to correct the record at any time prior to his confirmation, including after Fonville filed its claim contesting the foreclosure. Thus, based on his apparent material misrepresentation and ongoing failure to correct the record, Mr. Mulvaney appears to have violated 18 U.S.C. § 1001.

5 C.F.R. §§ 2635.101(b)(12), (14)

As part of their basic obligation of public service, all executive branch employees must adhere to the principles set out in the standards of ethical conduct.<sup>38</sup> Those standards require executive branch employees to "satisfy in good faith their obligations as citizens, including all just financial obligations" and to avoid any action creating the appearance that they are violating the law or ethical standards.<sup>39</sup> Mr. Mulvaney appears to have violated these obligations. First, Mr. Mulvaney has a significant ownership interest in Lancaster, which failed to repay its loan to Fonville. There is no evidence that Mr. Mulvaney made any good faith effort individually or as a member of Lancaster to pay off the Fonville loan. In fact, he appears to have personally participated in an effort to strip Fonville of its interest in the Lancaster property, joining in the creation of Indian Land Ventures to acquire the Paragon Bank loan and foreclose as the first lien holder. In doing so, Mr. Mulvaney represented that Fonville's loan likely will remain unpaid. By failing to undertake any apparent effort individually or collectively to ensure that the Fonville debt is paid, Mr. Mulvaney may have violated the standards of conduct at 5 C.F.R. § 2635.101(b)(12).

Second, if Mr. Mulvaney is in fact "Member A," his actions also have ethics implications. To the extent that Mr. Mulvaney or another investor in his entities engaged in the fraudulent misrepresentation of which Fonville accuses "Member A," Mr. Mulvaney may have failed to avoid any action creating the appearance that entities he is involved in are violating the law or ethical standards.<sup>40</sup> Taking actions that create the appearance of an ethical or legal violation runs contrary to Mr. Mulvaney's ethical obligations.

Potential Conflicts of Interest

As Acting Director of CFPB, Mr. Mulvaney's real estate interests raise additional conflicts of interest that were not vetted during his Senate confirmation for the appointment of OMB Director. Under the standards of ethical conduct applicable to all executive branch employees, Mr.

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<sup>38</sup> 5 C.F.R. § 2635.101(a).

<sup>39</sup> 5 C.F.R. §§ 2635.101(b)(12), (14).

<sup>40</sup> 5 C.F.R. § 2635.101(b)(14).



Mulvaney cannot accept loans on terms more favorable than those offered to other members of the public. To act otherwise would violate the prohibitions on gifts from a prohibited source.<sup>41</sup> As the acting head of the CFPB, Mr. Mulvaney also is required to comply with detailed ethics requirements involving entities supervised by the CFPB, to which he is, or may become, indebted.<sup>42</sup>

To avoid future conflicts of interest as Director of OMB and Acting Director of CFPB, prior to entering into any loan arrangement, Mr. Mulvaney should consult with the Office of Government Ethics and the Senate and amend his ethics agreement to commit that he will not refinance the Southern First Bank loan, which is due in April 2018, or enter into any other loan arrangement, on terms more favorable than those offered generally to other members of the public. The ethics agreement also should include an express commitment to comply with the CFPB regulations barring him from refinancing his Southern First Bank loan or other personal and business loans with entities supervised by the CFPB.

### **Conclusion**

Mr. Mulvaney's complex commercial real estate interests create a heightened opportunity for conflicts of interest, and thus require stringent adherence to his disclosure and ethical obligations. Mr. Mulvaney, however, appears to have mischaracterized the foreclosure action and the nature of Fonville's interest in the Lancaster property to the Senate during his nomination proceedings and to have taken extraordinary measures to avoid satisfying his company's financial obligations to Fonville. Mr. Mulvaney's conduct is particularly concerning due to his role as head of both OMB and CFPB. As a result, CREW respectfully requests that you review and investigate whether Mr. Mulvaney has violated 18 U.S.C. § 1001 and 5 C.F.R. §§ 2635.101(b)(12), (14), and take appropriate action.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>41</sup> 5 C.F.R. § 2635.101(b)(4); 5 C.F.R. §§ 2635.202-2635.203(a)(3).

<sup>42</sup> 5 C.F.R. § 9401.107; 5 C.F.R. § 9401.109. CFPB prohibits an employee, and the employee's spouse or minor child from accepting credit from, becoming indebted to, or entering into any other financial relationship with an entity supervised by the CFPB, if the credit or financial relationship contains terms that are more favorable than those offered to the public in comparable circumstances.